(1) S.B. CIVIL MISC. APPEAL NO. 440/2002
(Motilal Vs. Vijay Singh & ors.)

(2) S.B.CIVIL MISC. APPEAL NO.561/2002
(Motilal Vs. Arun Agarwal & ors.)

(3) S.B.CIVIL MISC.APPEAL NO.400/2001
(Motilal Vs. Sumitra Kanwar & ors.)

Date of Order :: 27th February 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.R.S.Saluja for the appellant
Mr.R.K.Singhal for the respondents

These three appeals preferred by the owner of the vehicle involved in accident against the common award dated 07.11.1998 made by the Motor Accidents Claims Tribunal, Bikaner are taken up together for disposal at this stage for the reasons and circumstances expounding themselves hereafter.

By the award impugned, the Tribunal has proceeded to award compensation in the sum of Rs.30,600/- in Claim Case No.18/1995 (challenged in CMA No.440/2002), Rs.26,000/- in Claim Case No.19/1995 (CMA No.561/2002) and Rs.1,70,000/- in Claim Case No.20/1995 (CMA No.400/2001). The claim applications aforesaid were submitted with the averments that on 04.07.1994 three persons, the injured Vijay Singh and Arun Agarwal and the deceased Govind Singh, were travelling in a car bearing registration No.RSF 3158 coming to Bikaner from Ladnu; that the car was being driven

by the non-applicant No.2 Raj Kumar; at about 12:00 midnight the car driver lost control on the vehicle that dashed against a road-side tree causing fatal injuries to Govind Singh whereas Vijay Singh and Arun Agarwal sustained grievous injuries.

Stating liability of the non-applicant No.1 Motilal (appellant) as registered owner, the non-applicant No.2 Raj Kumar as driver, and the non-applicant No.3 as insurer of the vehicle in question, the claimants Vijay Singh (Claim Case No.18/1995) and Arun Agarwal (Claim Case No.19/1995) sought compensation for the loss suffered by them due to injuries sustained in accident whereas the claimant Sumitra Kanwar (Claim Case No.20/1995) sought compensation for the loss due to death of her son Govind Singh (26 years). The non-applicant No.2 remained ex parte and the non-applicant No.1 (appellant) contested the claim applications, inter alia, on the averments that the non-applicant No.2 Raj Kumar took away the car without his permission and caused the accident; that the car was not being driven under his control and directions and, therefore, he was not liable; and that even otherwise the car was insured with the non-applicant No.3.

The non-applicant No.3, insurer of the vehicle, while admitting insurance coverage of the car in question denied its liability because of violation of the policy conditions for the car

being used for carriage of passengers though it were a private vehicle.

After framing of necessary issues and taking evidence led by the parties, the Tribunal proceeded to find in issue No.1, particularly on the basis of the statements of AW-2 Vijay Singh and AW-3 Arun Agarwal, that the accident occurred for rash and negligent act of the vehicle driver, non-applicant No.2. While taking up quantification of compensation, in Claim Case No.18/1995 the Tribunal found the claimant Vijay Singh having sustained various injuries including fracture of left femur bone and awarded compensation in the sum of Rs.30,600/- whereas in Claim Case No.19/1995, the Tribunal found grievous injuries suffered by the claimant Arun Kumar on his left leg and allowed him compensation in the sum of Rs.26,000/-. The Tribunal took loss of contribution in Claim Case No.20/1995 for the mother of the victim at Rs.8,000/- per annum and with application of multiplier of 18 assessed pecuniary loss at Rs.1,44,000/- and after allowing Rs.20,000/- towards non-pecuniary loss and Rs.6,000/-towards transportation and funeral expenses awarded total compensation in the sum of Rs.1,70,000/-.

While taking up liability of the insurer, the Tribunal noticed that non-applicant No.3 had of course issued insurance policy in relation to the vehicle in question that was

in force on the date of accident but then noticed from the cover note Ex.6 that it were an 'Act only' policy issued after charging premium of Rs.160/-. Noticing the capacity of victims as gratuitous passengers in the vehicle, the Tribunal found that in their relation, the insurer was not liable under the policy in question. The Tribunal also noticed the submission on behalf of the vehicle owner (the present appellant) that the non-applicant No.2 Raj Kumar had taken away the vehicle without his permission and disbelieved such assertion with reference to the evidence available on record and found that the owner of the vehicle was responsible for making payment of the amount of compensation and, accordingly ,made the award aforesaid against the non-applicants Nos.1 and 2 i.e., the owner and driver of the vehicle.

These three appeals preferred by the owner of the vehicle involved in accident have been admitted for hearing on different dates; but it is an admitted position on behalf of the appellant that the amount payable under the award in question has already been paid to the respective claimants.

On 12.10.2006, CMA No.561/2002 was listed before the Court for orders in relation to service upon respondent No.2 Raj Kumar i.e., the driver of the vehicle involved in accident, said to have taken the vehicle without permission and instructions of the owner; the appellant was directed to submit

notices in two sets within one week; and office was directed to issue the notices returnable on 12.12.2006 with one set to be given ‘dasti’ for service upon the unserved respondent No. 2 by registered post. These directions were complied on 19.10.2006. Then, on 12.12.2006 while notices were ordered to be awaited for two weeks, the appellant was directed to submit postal receipts (of the notices given ‘dasti’ for service by registered post). Then, an application was moved on behalf of the appellant about the postal receipt having been misplaced but it being lacking in particulars, on 15.02.2007 the appellant was directed to file specific affidavit stating the date and post office of dispatch. However, the appellant has failed to account for such notices given 'dasti' for registered post as noticed on 15.02.2007; and yesterday, i.e. on 26.02.2007, learned counsel for the appellant expressed his clerk’s inability to ascertain the necessary particulars. In the circumstances, the records were examined, including that of CMA No. 440/2002, as pointed out by the learned counsel to be a cognate matter arising out of the same award.

While examining the record of CMA No.440/2002 filed by the appellant against the common award, it was noticed that in the said appeal, service on the very same respondent No.2 Raj Kumar has been got dispensed with by the appellant on 01.02.2006. In the circumstances, these three matters were

ordered to be listed today with the following order:-

> "Learned counsel for the appellant Mr. R.S. Saluja submits that despite making inquiries, his clerk has not been able to ascertain the exact date from the post office of sending the notices by registered post for service on respondent No.2 and, therefore, expresses his inability to file affidavit as required by the order dated 15.02.2007.
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> In view of default on the part of the appellant and in the circumstances of the case, the record has been examined and it is noticed that three claim cases were decided together by the common impugned award dated 07.11.1988. Upon submissions of the learned counsel for the appellant, the record of cognate matter, CMA No.440/2002 was called and it is noticed that in the said appeal service on the same respondent No.2 Raj Kumar has been got dispensed with by the appellant. Obviously, the findings concerning respondent No.2 Raj Kumar cannot be challenged in the said appeal and such position has direct effect on this appeal and so also the connected appeal CMA No.400/2001. Hence it appears appropriate to examine the three matters together.
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> Put up these matters, CMA Nos.440/2002, 561/2002 and 400/2001 tomorrow."

In view of the fact that service on respondent No.2 Raj Kumar has been dispensed with in CMA No.440/2002, it is obvious that the grounds sought to be urged in relation to the said respondent, particularly the contention that he had taken the vehicle without permission of the appellant and that the vehicle was not being plied under the control and directions of the appellant, is not to be urged in the said appeal. When the said ground is given up and hence stands concluded

against the appellant in one appeal, as a necessary corollary, the same does not remain available in other appeals either. In this view of the matter, particularly when CMA No.440/2002 is not being proceeded against the respondent No.2, other two appeals, CMA No.561/2002 and 400/2001 could also not be proceed against the said respondent No. 2 for the purpose of consideration of the same common ground. This is apart from the fact that the appellant has failed to get the said respondent served despite several opportunities in CMA No.561/2002.

Even otherwise, having examined the award in question, this Court is satisfied that the Tribunal has not erred in recording the finding against the appellant so far his dealing with the respondent No.2 Raj Kumar is concerned. The appellant maintained that he was not in the town and Raj Kumar took away the vehicle after making a request to his wife though, according to the appellant, his wife declined such permission. The story suggested by the appellant remains hollow and baseless; and the Tribunal has rightly rejected the same. In the circumstances of the case, with the loss having been caused by the use of the vehicle owned by the appellant, the Tribunal cannot be said to have erred in fastening liability upon him. Thus, even on merits the above-mentioned contention of the appellant against the respondent No. 2 remains bereft of substance and of no avail.

The only other question in these appeals remains about the liability under the insurance policy. From their capacity in the vehicle in question, as stated by the claimants themselves, it is apparent that they were nothing but gratuitous passengers. The insurer having undertaken 'Act only' liability and no case having been made out for coverage of the occupants of the vehicle, the Tribunal has, again, not erred in exonerating the insurer of its liability. Such finding too calls for no interference in appeal.

Failing the two grounds sought to be urged in these appeals, nothing further survives for consideration.

Consequently, the appeals fail; and are dismissed. No costs.

MK **(DINESH MAHESHWARI), J.**

S.B.CIVIL MISC. APPEAL NO.561/2002
(Motilal Vs. Arun Agarwal & ors.)

Date of Order :: 27th February 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.R.S.Saluja for the appellant
Mr.R.K.Singhal for the respondents

Appeal is dismissed vide order made in S.B.Civil Misc. appeal No.440/2002 (Motilal Vs. Vijay Singh & ors.).

B.O.

COURT MASTER

S.B.CIVIL MISC.APPEAL NO.400/2001
(Motilal Vs. Sumitra Kanwar & ors.)

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